

HOUSE BILL 3065  
By Bowers

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 10, relative to tobacco.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following new, appropriately designated section:

67-4-10\_\_.

(a) For purposes of this section:

(1) "Adult" means a person who is at least the legal minimum purchase age.

(2) "Consumer" means an individual who is not licensed as a wholesaler or retailer pursuant to § 67-4-1015.

(3) "Delivery sale" means any sale of cigarettes to a consumer in the state where either:

(A) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or

(B) The cigarettes are delivered by use of the mails or other delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state.

(4) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

(5) "Department" means the Tennessee department of revenue.

(6) "Legal minimum purchase age" is the minimum age at which an individual may legally purchase cigarettes in the state.

(7) "Mails" or "mailing" means the shipment of cigarettes through the United States postal service.

(8) "Person" means the same as that term is defined in § 67-4-1001.

(9) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(10) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

(b)

(1) No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in Tennessee.

(2) Each person accepting a purchase order for a delivery sale shall comply with:

(A) The age verification requirements set forth in subsection (c);

(B) The disclosure requirements set forth in subsection (d);

(C) The shipping requirements set forth in subsection (e);

(D) The registration and reporting requirements set forth in subsection (f);

(E) The tax collection requirements set forth in subsection (g); and

(F) All other laws of the state generally applicable to sales of cigarettes that occur entirely within the state, including, but not limited to, those laws imposing:

(i) Excise taxes;

(ii) Sales taxes;

(iii) License and revenue-stamping requirements;

and

(iv) Escrow payment obligations as set forth in §§  
47-31-101 through 47-31-103.

(c)

(1) No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless such person prior to the first delivery sale to such consumer:

(A) Obtains from the prospective consumer a certification that includes:

(i) A reliable confirmation that the consumer is at least the legal minimum purchase age; and

(ii) A statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least eighteen (18) years of age.

Such statement shall also confirm:

(i) That the prospective consumer understands that signing another person's name to such certification is illegal;

(ii) That the sale of cigarettes to individuals under the legal minimum purchase age is illegal;

(iii) That the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the state; and

(iv) That the prospective consumer wants to receive mailings from a tobacco company;

(B) Makes a good faith effort to verify the information

contained in the certification provided by the prospective consumer pursuant to subdivision (A) against a commercially available database, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

(C) Provides to the prospective consumer, via e-mail or other means, a notice that meets the requirements of subsection (d); and

(D) In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name, or by check.

(2) Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

(d) The notice required under subdivision (c)(1)(C) shall include:

(1) A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum purchase age are illegal;

(2) A prominent and clearly legible statement that consists of one (1) of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1), rotated on a quarterly basis;

(3) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (c); and

(4) A prominent and clearly legible statement that cigarette sales are subject to tax under § 67-4-1004, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

(e)

(1) Each person who mails, ships, or otherwise delivers cigarettes

in connection with a delivery sale:

(A) Shall include as part of the bill of lading or other shipping documents a clear and conspicuous statement providing as follows: "Cigarettes: Tennessee Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

(B) Shall use a method of mailing, shipping, or delivery that obligates the delivery service to require:

(i) The consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container; and

(ii) Proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that the individual is either the addressee or another adult of legal minimum purchase age residing at the consumer's address. However, proof of the legal minimum purchase age shall be required only if such individual appears to be under twenty-seven (27) years of age; and

(C) Shall provide to the delivery service retained for such delivery sale evidence of full compliance with subsection (g).

(2) If the person accepting a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this section applicable to a delivery service and shall be in violation of the provisions of this section if the person fails to comply with any such requirement.

(f)

(1) Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, every person shall file with the department a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

(2) Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous calendar month shall file with the department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

(A) The name and address of the consumer to whom such delivery sale was made;

(B) The brand or brands of the cigarettes that were sold in such delivery sale; and

(C) The quantity of cigarettes that were sold in such delivery sale.

(3) Any person that satisfies the requirements of U.S.C. § 376 shall be deemed to satisfy the requirements of this section.

(g) Each person accepting a purchase order for a delivery sale shall collect and remit to the department all cigarette taxes imposed by the state with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise) that such taxes already have been paid to the state.

(h)

(1) Except as otherwise provided in this section, a first violation of any provision of this section shall be punishable by a fine of one thousand dollars (\$1,000) or five (5) times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation of any provision of

this section shall be punishable by a fine of five thousand dollars (\$5,000) or five (5) times the retail value of the cigarettes involved, whichever is greater.

(2) Any person who knowingly violates any provision of this section, or who knowingly and falsely submits a certification under subdivision subsection (c)(1)(A) in another person's name commits a Class D felony and, shall, for each such offense, be fined ten thousand dollars (\$10,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than five (5) years, or both.

(3) Any person failing to collect or remit to the department any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five (5) times the retail value of the cigarettes involved.

(4)

(A) Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this section shall be forfeited to the state and destroyed.

(B) All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud the state, violates any of the requirements of this section, shall be forfeited to the state.

(i) The attorney general or the attorney general's designee, or any person who holds a valid permit under 26 U.S.C. § 5712, may bring an action in the appropriate court in the state to prevent or restrain violations of this section by any person, or any person controlling such person.

SECTION 2. This act shall take effect July 1, 2004, the public welfare requiring it